

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE

Mailing Address: P.O. Box 1689, Santa Fe, NM 87504-1689

Physical Address: 1120 Paseo de Peralta, Room 428, Santa Fe, NM 87501

Main Phone: (505) 827-4601; Main Fax (505) 827-4734; Toll Free: 1-855-4-ASK-OSI

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**SUPERINTENDENT OF
INSURANCE**

John G. Franchini – (505) 827-4299

DEPUTY SUPERINTENDENT

Robert Doucette – (505) 827-4439



Service of Process

Room 432

(505) 827-4241

NC-Air Pros
RECEIVED

JUL 19 2017

RECEIVED
JUL 18 2017
LAW DEPT

July 12, 2017

Contractors Bonding and Insurance Company
9025 North Lindbergh Drive
Peoria, IL 61615

**RE: DWAYNE AND MICHELLE HATTEN, PLAINTIFFS AND V. AIR PROS
HEATING & COOLING, LLC, THIRD-PARTY DEFENDANTS, AND V. TWIN
CONTRACTORS, THIRD-PARTY DEFENDANTS, AND V. TWIN
CONTRACTORS, FOURTH-PARTY PLAINTIFF, V. CONTRACTORS
BONDING AND INSURANCE COMPANY, AN ILI V. CONTRACTORS
BONDING AND INSURANCE COMPANY
D-1333-CV-2016-00030**

Dear Mr. President:

In accordance with the provisions of NMSA 1978, Sections 59A-5-31 & 59A-32, enclosed is a copy of a Summons and Answer to complaint on the above styled cause. Service was accepted on your behalf on 7/12/2017.

Respectfully,

Handwritten signature of John G. Franchini in cursive.

John G. Franchini, Superintendent

Enclosure:

CERTIFIED MAIL 7010 0290 0002 3836 0903

EXHIBIT A

FILED IN MY OFFICE
DISTRICT COURT CLERK
7/3/2017 11:19:51 AM
Toinette Garcia

STATE OF NEW MEXICO
COUNTY OF CIBOLA
THIRTEENTH JUDICIAL DISTRICT

Flo Abad

DWAYNE and MICHELLE HATTEN,

Plaintiffs,

v.

Cause No. D-1333-CV-2016-00030

AIR PROS HEATING & COOLING, LLC,
CASH CONSTRUCTION, LLC and
KORY CASH,

Defendants,

And

AIR PROS HEATING & COOLING, LLC,

Third-Party Plaintiff,

v.

TWINS CONTRACTORS,

Third-Party Defendants,

And

TWINS CONTRACTORS,

Fourth-Party Plaintiff,

v.

CONTRACTORS BONDING AND INSURANCE
COMPANY, an Illinois Insurance Company admitted
to sell insurance in the State of New Mexico

Fourth-Party Defendant,

**TWINS CONTRACTOR'S ANSWER TO THIRD PARTY COMPLAINT,
AND FOURTH PARTY COMPLAINT**

ANSWER TO THIRD PARTY COMPLAINT

For its Answer to Third-Party Plaintiff's Third-Party Complaint, Third-Party Defendant Twins Contractors, by its attorneys, the Eaton Law Office, P.C. (by James D. McAlister), states:

1. Third-Party Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1 of the Third-Party Complaint.
2. The allegations contained in Paragraph 2 of the Third-Party Complaint are admitted.
3. The allegations contained in Paragraph 3 of the Third-Party Complaint are admitted.
4. In answer to the allegations contained in Paragraph 4 of the Third-Party Complaint, it is admitted that Plaintiffs have alleged various construction defects, but Plaintiffs' Complaint does not mention that the house has "settled".
5. Third-Party Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 5 of the Third-Party Complaint, and the same are therefore denied pending strict proof thereof.
6. In answer to the allegations contained in Paragraph 6 of the Third-Party Complaint, it is admitted that Third-Party Defendant performed some work on the premises.
7. The allegations contained in Paragraph 7 of the Third-Party Complaint are admitted.
8. The allegations contained in Paragraph 8 of the Third-Party Complaint are denied.
9. The allegations contained in Paragraph 9 of the Third-Party Complaint are denied.

AFFIRMATIVE DEFENSES

1. As a separate and alternative affirmative defense, Third-Party Plaintiff has failed to state a claim against Third-Party Defendant upon which relief may be granted.

2. As a separate and alternative defense, if Third-Party Defendant was negligent or otherwise at fault, which negligence and fault are specifically denied, then Third-Party Defendant is entitled to have determined whether Third-Party Plaintiff and/or any other parties, persons or entities were comparatively negligent or at fault, and such comparative negligence or fault should be used to offset in whole, or in part, Third-Party Plaintiff's recovery against Third-Party Defendant herein.

3. As a separate and alternative defense, the evidence may show that Plaintiffs, Defendants and Third-Party Plaintiff have failed to mitigate their damages.

4. As a separate and alternative defense, Third-Party Plaintiff's indemnity claim is barred if it is shown that Third-Party Plaintiff was itself negligent or at-fault.

5. As a separate and alternative defense, the acts and damages complained of by Third-Party Plaintiff were the proximate result of the acts or failures to act of other parties or other persons or of an independent intervening nature, thereby barring recovery by Third-Party Plaintiff against this Third-Party Defendant.

6. As a separate and alternative defense, Plaintiffs' damages were not proximately caused by any act or omission of this Third-Party Defendant.

7. Third-Party Plaintiff's claims against this Third-Party Defendant are barred by the doctrines of laches, waiver or estoppel.

8. All work performed by Third-Party Defendant was done in a timely and professional manner, pursuant to a workmanlike standard which complies with the ordinary skill

of other contractors and builders who undertake such work, as determined by generally accepted standards of performance in the construction industry.

9. Third-Party Defendant states that it acted in good faith towards Third-Party Plaintiff.

10. Third-Party Plaintiff's claims may be time barred based on the Statute of Repose, NMSA 37-1-27 and/or other statutes of limitations.

11. Third-Party Defendant states these affirmative defenses are preliminary, without the benefits of all facts underlying or pertaining to Third-Party Plaintiff's claims and therefore, Third-Party Defendant reserves the right to raise additional affirmative defenses as they become known or apparent.

WHEREFORE, Third-Party Defendant Twins Contractors, having fully answered, respectfully requests that the Third-Party Complaint against it be dismissed, for Third-Party Defendant's costs, together with any other and further relief deemed proper by this Court.

EATON LAW OFFICE, P.C.

By /s/ James D. McAlister -
James D. McAlister
P. Scott Eaton
Attorneys for Third-Party Defendant Twins
Contractors
P. O. Box 25305
Albuquerque, NM 87125-5305
Tel: (505) 243-1486
Fax: 505-842-0485

**FOURTH PARTY COMPLAINT FOR DECLARATORY JUDGMENT AGAINST
CONTRACTORS BONDING AND INSURANCE COMPANY**

For its Fourth Party Complaint for Declaratory Judgment Against Contractors Bonding and Insurance Company ("CBIC"), Twins Contractors, by its attorneys, Bauman, Dow & Stambaugh, P.C. (by Deborah R. Stambaugh), hereby sets forth the following allegations:

1. Twins Contractors restates and incorporates all preceding allegations as if fully set forth herein.
2. On November 3, 2011, CBIC issued a general liability insurance policy to Twins Contractors with policy No. A11AN8240 (the "Policy").
3. That Policy provides coverage and defense to Twins Contractors for the claims brought by Air Pros.
4. Twins tendered the Air Pros claim to CBIC.
5. CBIC refused to defend Twins for the claims asserted by Air Pros
6. There is an actual controversy regarding whether CBIC owed a duty to defend Air Pros.

WHEREFORE the insured, Twins Contractors, respectfully requests judgment declaring that CBIC breached its duty to defend.

BAUMAN, DOW & STAMBAUGH, P.C.

By: /s/ Deborah R. Stambaugh

Deborah R. Stambaugh

P.O. Box 30684

Albuquerque, NM 87109

Telephone: (505) 883.3191

Facsimile: (505) 883-3194

drs@bdsfirm.com

Insurance coverage

Counsel for Twins Contractors

I HEREBY CERTIFY that on July 3, 2017, a true and accurate copy of the foregoing Answer to Plaintiff's Complaint was served upon all counsel of record via the CM/ECF System.

By: Electronically filed 07/03/2017

Deborah R. Stambaugh

SUMMONS	
<p>DISTRICT COURT: Thirteenth Judicial District Court Cibola County</p> <p>700 E. Roosevelt Ave., Suite 60 Grants, NM 87020</p> <p>Court Telephone No. (505) 287-8831</p>	<p>CASE NUMBER: D-1333-CV-2016-00030</p> <p>Assigned Judge: Honorable James Lawrence Sanchez</p>
<p>DWAYNE and MICHELLE HATTEN,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>AIR PROS HEATING & COOLING, LLC, CASH CONSTRUCTION, LLC and KORY CASH,</p> <p style="text-align: center;">Defendants,</p> <p>And</p> <p>AIR PROS HEATING & COOLING, LLC,</p> <p style="text-align: center;">Third-Party Plaintiff,</p> <p>v.</p> <p>TWINS CONTRACTORS,</p> <p style="text-align: center;">Third-Party Defendants,</p> <p>And</p> <p>TWINS CONTRACTORS,</p> <p style="text-align: center;">Fourth-Party Plaintiff,</p> <p>v.</p> <p>CONTRACTORS BONDING AND INSURANCE COMPANY, an Illinois Insurance Company admitted to sell insurance in the State of New Mexico</p> <p style="text-align: center;">Fourth-Party Defendant,</p>	<p>DEFENDANT NAME:</p> <p>Contractors Bonding and Insurance Company</p> <p>Address: c/o Superintendent of Insurance PO Box 1689 Santa Fe, NM 87504-1689</p>

TO THE ABOVE NAMED DEFENDANT(S): Take notice that

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.

2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA) The Court's address is listed above.

3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.

4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.

5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.

6. If you need an interpreter, you must ask for one in writing.

7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6657; or 1-505-797-6066.

Dated at GRANTS, New Mexico, this 6TH day of JULY, 20 17.

CLERK OF DISTRICT COURT

By: /s/ Toinette Garcia 7/6/2017

~~XXXXX~~



/s/ Deborah R. Stambaugh

Signature of Attorney for Plaintiff

Name: Deborah R. Stambaugh

BAUMAN, DOW & STAMBAUGH, P.C.

Address: 7309 Indian School Road, NE

Telephone No.: (505) 883-3191

Fax No.: (505) 883-3194

Email Address: drs@bdsfirm.com

THIS SUMMONS IS ISSUED PURSUANT TO RULE 1-004 OF THE NEW MEXICO RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS.

RETURN¹

STATE OF _____)
)ss
COUNTY OF _____)

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in _____ county on the _____ day of _____, _____, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

(check one box and fill in appropriate blanks)

☐ to the defendant _____ (*used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint*)

☐ to the defendant by [mail] [courier service] as provided by Rule 1-004 NMRA (*used when service is by mail or commercial courier service*).

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

☐ to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____, (*used when the defendant is not presently at place of abode*) and by mailing by first class mail to the defendant at _____ (*insert defendant's last known mailing address*) a copy of the summons and complaint.

☐ to _____, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at _____ (*insert defendant's business address*) and by mailing the summons and complaint by first class mail to the defendant at _____ (*insert defendant's last known mailing address*).

☐ to _____, an agent authorized to receive service of process for defendant _____.

☐ to _____, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant _____ (*used when defendant is a minor or an incompetent person*).

[] to _____ (name of person), _____,
(title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees: _____

Signature of person making service

Title (if any)

Subscribed and sworn to before me this _____ day of _____, _____²

Judge, notary or other officer
authorized to administer oaths

(SEAL)

Official title

USE NOTE

1. Unless otherwise ordered by the court, this return is not to be filed with the court prior to service of the summons and complaint on the defendant.

2. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy sheriff need not be notarized.

[Adopted effective August 1, 1988; as amended by Supreme Court Order 05-8300-01, effective March 1, 2005; by Supreme Court Order 07-8300-16, effective August 1, 2007; by Supreme Court Order No. 12-8300-026, effective for all cases filed or pending on or after January 7, 2013.]

Office of
Superintendent of Insurance
Service of Process
P.O. Box 1689
Santa Fe, New Mexico 87504-1689



Name B. B. B.
1st Notice 7-15-17
2nd Notice _____
Returned _____

Contractors Bonding and Insurance Company
9025 North Lindbergh Drive
Peoria, IL 61615
0903